

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EUGENE WOOTEN,

Plaintiff,

vs.

Case No. 11-11479

ANTJWAN SPIGNER and
BRANDON SHORTRIDGE,

HON. AVERN COHN

Defendants.

ORDER DENYING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT (Doc. 33)
AND SETTING A BRIEFING SCHEDULE

I.

This is a civil rights case under 42 U.S.C. § 1983. Plaintiff is proceeding pro se and presently a state prisoner. Plaintiff is suing defendants Antjwan Spigner and Brandon Shortridge,¹ who are Detroit police officers. Plaintiff claims that defendants violated his constitutional rights under the Fourth and Fourteenth Amendments. In the complaint, plaintiff alleges that in the early morning hours of July 9, 2009, he was a passenger in a vehicle which was stopped by the defendant police officers. He alleges the officers did not identify themselves as officers and approached with their guns drawn. Plaintiff further alleges that as a result, he attempted to flee and defendants shot at him. He also alleges the officers gave false statements resulting in false charges against him.

¹Plaintiff also sued the City of Detroit. The City of Detroit filed a motion to dismiss, which was granted based on recommendation of a magistrate judge. (Doc. 17).

Defendants allege that plaintiff fled from the vehicle with a weapon. Both defendants allege that they ordered plaintiff to drop the weapon; he did not. Defendants further allege the gave chase on foot, and during the foot pursuit plaintiff turned around and pointed the weapon at defendants. Defendants shot at plaintiff. One round hit plaintiff in the buttocks.

Plaintiff was bound over on charges of assault with a dangerous weapon, felony firearm, and resisting a police officer. Plaintiff was convicted by a jury of resisting a police officer. At the time of the incident, plaintiff was on parole for a 2006 armed robbery conviction.

II.

On October 23, 2012, The Court entered Pretrial Order No. 1 which directed plaintiff to file (1) a short narrative of the facts he expects to prove at trial, (2) a list of the witnesses, including a short summary of their expected testimony, and (3) a list of exhibits. (Doc. 27). Plaintiff timely filed this information. (Doc. 30). On November 14, 2012, the Court entered Pretrial Order No. 2, directed at defendants, and requesting the same information. (Doc. 29). On June 9, 2013, defendants complied (Doc. 34).² Thereafter, the Court requested that defendants file (1) the transcript from plaintiff's preliminary examination and (2) the Detroit Police Department Homicide Scene & Force Investigation. On June 18, 2013, defendants again filed their response to Pretrial Order No. 2 and attached the requested documents. (Doc. 35).

²Plaintiff filed a motion for default judgment on the grounds that defendants did not timely respond to Pretrial Order No. 2. Even though defendants' response was untimely, plaintiff is not entitled to a default judgment under these circumstances. Accordingly, plaintiff's motion for default judgment is DENIED.

III.

The Court construes defendants' June 18, 2013 filing (Doc. 35) as a motion for summary judgment under Fed. R. Civ. P. 56. Plaintiff shall respond to defendants' motion on or before July 18, 2013. Plaintiff's response may contain additional exhibits and argument in support of his claims. Defendants shall file a reply on or before August 1, 2013, which may include additional exhibits and argument as to whether defendants are entitled to summary judgment based on the record.

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: June 20, 2013

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, June 20, 2013, by electronic and/or ordinary mail.

S/Sakne Chami
Case Manager, (313) 234-5160